

IN THE MATTER OF : BEFORE THE  
ARIANA W. ARNOLD : HOWARD COUNTY  
 : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
 : BA Case No. 06-019V

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**DECISION AND ORDER**

On June 12, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Ariana W. Arnold, Petitioner, for a variance to reduce the 10-foot side setback to 4 feet for a detached garage to be located in an R-20 (Residential – Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Ariana and Haskell Arnold testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 8914 Old Frederick Road, is located in the 2<sup>nd</sup> Election District on the north side of Old Frederick Road about 450 feet east of Chapel Avenue in Ellicott City (the “Property”). The Property is identified on Tax Map 17, Block 12 as Parcel 40.

The Property is a quadrilateral-shaped lot consisting of about 0.5 acres, or 21,780 square feet. The lot has about 155 feet of frontage on Old Fredrick Road and is about 150 feet deep. The rear lot line is about 139 feet long.

The Property is improved with a two-story residential dwelling that faces Old Frederick Road and is located in the southeastern portion of the site, about 49 feet from the road frontage and 28 feet from the east side lot line. To the rear of the house, in the northeastern portion of the lot, is a 26.2' wide by 29.7' deep detached two-bay garage. The garage is accessed from a gravel driveway from Old Frederick Road beginning at the southeast corner of the lot.

The topography of the Property is bowl-shaped; it slopes down from the front to back and from the sides to the center. A large mature tree is located immediately to the west of the detached garage. This tree appears to be more than 30" in diameter (see Photos 2 and 3).

2. The Petitioners, the owners of the Property, request a variance for the detached garage which is situated 4 feet from the side lot line and therefore encroaches 6 feet into the 10-foot side setback required by Section 108.D.4.c(1)(b).

3. Vicinal properties are also zoned R-20 and are improved with residential dwellings, except the lot to the east of the Property, which is vacant.

4. Mr. and Mrs. Arnold testified that they are renovating the house and garage on the Property, which were originally built in the 1920's. They attempted to repair the original garage, but discovered that it was beyond repair and decided to replace it. They built the garage on the same foundation as the original garage, which was also four feet from the adjacent lot line.

Mr. Arnold, a contractor, testified that he consulted with a tree surgeon who advised that the

tree located next to the garage is a “bicentennial tree” which is 230-270 years old. He stated that the tree’s root system is extensive and is intertwined with the garage foundation. Any attempt to alter the foundation or grade elsewhere on the lot would likely destroy the tree. He stated that the yard slopes down about 10 feet from the garage and tree toward the center of the lot.

### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be

granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the recessed topography of the rear of the Property prevents re-locating the garage to the back yard. The only practical option is to locate the garage in the northeast portion of the site, where the original garage was situated. In order to do so and comply with the 10-foot east side setback, the garage would have had to be located six feet to the west. This would have entailed additional grading or alteration of the existing foundation, which would have endangered the root system of the 230-270 year old bicentennial tree located next to the foundation. Ordinarily, trees are not considered “unique” features of a property. In this case, however, the extreme age of the tree and its size are unique; moreover, they render this particular tree worthy of protection under the

County's laws and policies.<sup>1</sup> In order to construct the garage without endangering the tree, however, it must be built on the existing foundation which encroaches slightly into the side setback. Consequently, I find that the topography of the Property and the location of the bicentennial tree are unique physical conditions that cause the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The garage will be used for permitted residential purposes and will not change the nature or intensity of the use. The garage replaces the original garage which was in the same location for over 50 years. The lot to the east of the Property is currently vacant. If the Petitioner installs appropriate landscaping along the east side lot line next to the garage, the variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the topography of the Property and the location of the bicentennial tree on the lot, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed garage is the same size as the previous garage and will be located in the only area practical due to the topography of the Property and the proximity of the bicentennial tree. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

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<sup>1</sup> A tree that is a "champion" tree, 75% of the size of a champion tree, or more than 30" in diameter is protected under the County's Forest Conservation Program, see Section 16.1200 et seq. of the Howard County Code.

**ORDER**

Based upon the foregoing, it is this **5<sup>th</sup> day of July 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Ariana W. Arnold for a variance to reduce the 10-foot side setback to 4 feet for a detached garage to be located in an R-20 (Residential – Single) Zoning District is hereby **GRANTED**;

**Provided, however**, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property, and subject to the following condition:

1. The Petitioner will install appropriate landscaping along the east side lot line next to the garage.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.